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State v. Wahl Appellant's Reply Brief Dckt. 43945

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43945
)	
v.)	TWIN FALLS COUNTY
)	NO. CR 2004-1686
)	
CHAD L. WAHL,)	
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

**HONORABLE RANDY J. STOKER
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

In his opening brief, Mr. Wahl argued the district court erred in denying the motion he filed pursuant to Idaho Rule of Civil Procedure (I.R.C.P.) 60(b) seeking relief from the restitution order entered on July 26, 2004. He argued the district court had subject matter jurisdiction to consider his motion, which was made within a reasonable time, and erred in denying his motion based on the plain language of Idaho Code § 10-110. In its response brief, the State argues the district court does not have jurisdiction to consider the merits of this appeal because the notice of appeal was not timely filed. (Resp. Br., pp.4-6.) The State also argues that even if this Court has jurisdiction to consider the merits, Mr. Wahl has shown no error on the part of the district court because, *inter alia*, “a restitution order is not a lien” and section 10-110 is thus inapplicable. (Resp. Br., p.6.) The State is incorrect and its arguments should be rejected.

Statement of the Facts and Course of Proceedings

Mr. Wahl included a statement of the facts and course of proceedings in his opening brief. (App. Br., pp.2-3.) He incorporates that statement herein by reference.

ISSUES

1. Does this Court have jurisdiction to consider the merits of this appeal?
2. Did the district court err in denying Mr. Wahl's motion for relief from the restitution order entered in this case on July 26, 2004?

ARGUMENT

I.

This Court Has Jurisdiction To Consider The Merits Of This Appeal

This Court has jurisdiction to consider the merits of this appeal because Mr. Wahl's notice of appeal was timely filed from the district court's Order Denying Motion to Reconsider Order of this Court Entered on 10/29/2015 ("Order Denying Motion to Reconsider"), which was filed on December 23, 2015. (R., pp.97-98.) Mr. Wahl filed a notice of appeal within 42 days of the entry of the Order Denying Motion to Reconsider, on January 19, 2016, which was timely pursuant to Idaho Appellate Rule (I.A.R.) 14(a). Both Mr. Wahl's notice of appeal and his amended notice of appeal, filed March 2, 2016, specifically identified the final judgment or order on appeal as the Order Denying Motion to Reconsider. (R., pp.99-103, 110-13.)

In his opening brief, Mr. Wahl referred to, and specifically addressed, the district court's Order Denying Motion for Relief from Judgment, filed October 29, 2015, because the district court included its findings and conclusions in that order, and denied Mr. Wahl's motion to reconsider without any additional analysis.¹ (See R., pp.82-86, 97-98.) However, that does not change the fact that Mr. Wahl appealed from the Order Denying Motion to Reconsider, not the Order Denying Motion for Relief from Judgment, and his notice of appeal was timely filed from the Order Denying Motion to Reconsider. This Court thus has jurisdiction to consider the merits of this appeal.

¹ In its Order Denying Motion to Reconsider, the district court stated only: "The defendant's Motion to Reconsider Order of This Court Entered on 10/29/2015 is DENIED." (R., p.97.)

II.

The District Court Erred In Denying Mr. Wahl's Motion For Relief From The Restitution Order Entered In This Case On July 26, 2004

With respect to this issue, Mr. Wahl relies on the argument contained in his opening brief. (App. Br., pp.5-9.) He includes this section here only to respond to the State's argument that he has shown no error on the part of the district court because "a restitution order is not a lien" and section § 10-110 is thus inapplicable. (Resp. Br., p.6.) Mr. Wahl does not contend that a restitution order is a lien; what he contends is that the district court erred in concluding the five-year statute of limitations set forth in section 10-110 was inapplicable where the State did not file a response in the district court to Mr. Wahl's motion for relief from the restitution order and, to the extent there was an evidentiary issue regarding whether the restitution order/judgment was recorded as a lien, the district court did not hold a hearing prior to making a factual finding in favor of the State.²

Mr. Wahl was aware of the restitution order when it was entered in 2004, and filed his motion for relief from the district court's restitution order within a reasonable time, as required by Rule 60(c)(1), because he could not have sought relief any earlier under section 10-110. Neither a restitution order nor a judgment lien can continue indefinitely. In this case, the district court erred in concluding that the restitution order could still be enforced by the State, notwithstanding the 5-year statute of limitations contained in the applicable version of section 10-110, which did not exempt orders of restitution to crime victims.

² Mr. Wahl acknowledges here, as he did in his opening brief, that there is no evidence in the record that the restitution order was ever recorded. (App. Br., p.8.)

CONCLUSION

For the reasons stated above, as well as those set forth in his opening brief, Mr. Wahl requests that the Court vacate the district court's Order Denying Motion to Reconsider and remand this case to the district court with instructions to grant Mr. Wahl's motion for relief from the restitution order entered in this case on July 26, 2004, and strike that restitution order.

DATED this 12th day of September, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of September, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

CHAD L WAHL
INMATE #24971
ISCI
PO BOX 14
BOISE ID 83707

RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas